

Order

Entered: September 9, 2003

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

ADM File No. 2001-47

Amendment of Rule 2.102
of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 2.102 of the Michigan Court Rules is adopted, to be effective January 1, 2004.

[The present language is amended as indicated below by underlining for additions and strikeover for deletions.]

Rule 2.102 Summons; Expiration of Summons; Dismissal of Action for Failure to Serve

(A) - (C) [Unchanged.]

(D) Expiration. A summons expires 91 days after the date the complaint is filed. However, within ~~that~~ those 91 days, on a showing of ~~good cause~~ due diligence by the plaintiff in attempting to serve the original summons, the judge to whom the action is assigned may order a second summons to issue for a definite period not exceeding 1 year from the date the complaint is filed. If such an extension is granted, the new summons expires at the end of the extended period. The judge may impose just conditions on the issuance of the second summons. Duplicate summonses issued under subrule (A) do not extend the life of the original summons. The running of the 91-day period is tolled while a motion challenging the sufficiency of the summons or of the service of the summons is pending.

(E) - (G) [Unchanged.]

Staff Comment: The September 9, 2003 amendment of subrule (D), effective January 1, 2004, substituted the phrase “due diligence by the plaintiff in attempting to serve the original summons” for the “good cause” requirement in the former subrule. This is consistent with *Bush v Beemer*, 224 Mich App 457 (1997). Cf. *Richards v McNamee*, 240 Mich App 444 (2000). In any event, the relevant statute of limitations would not be tolled unless the complaint were timely filed *and* the requirements of MCL 600.5856 were met before the expiration of the period of limitation. See *Gladych v New Family Homes, Inc*, 469 Mich ____ (2003).

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 9, 2003

Corbin R. Davis

Clerk